

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRED NEUMANN
and
HATTO HECHLER

Appeal No. 2004-1354
Application 09/855,929

HEARD: August 17, 2004

Before COHEN, FRANKFORT, and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8 and 11 through 22. Claims 9, 10

and 23, the only other claims remaining in the application, have been objected to for being dependent upon a rejected base claim, but have also been indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Appellants' invention relates to a folder unit (10) for a folding machine, which unit has a plurality of rollers, in particular folding rollers (16, 18), and side walls (12, 14) on which the rollers are supported on both sides. In addition, as can be seen from Figures 1 and 2 of the application, each of the side walls (12, 14) has a recess (15, 17) therein located opposite to each other and configured to receive a processing element (20) to be connected to the folder unit. Appellants indicate that an advantage of this arrangement of recesses is that different processing elements or inserts (20) can be mounted in the recesses to suit various requirements at the outlet of the folder unit. Claim 1 is representative of the subject matter on appeal and reads as follows:

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1. A folder unit processing flat products running in a product travel direction, comprising:

side walls each having a front side pointing downstream with respect to the product travel direction;

a framework;

a processing device supported by said framework;

a plurality of rollers rotatably supported by said side walls;

each of said side walls having, at said front side, a recess forming an opening pointing downstream with respect to the product travel direction, said recesses being disposed opposite one another and configured to receive said framework.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Kovac et al. (Kovac)	4,995,600	Feb. 26, 1991
Dickhoff	5,980,444	Nov. 9, 1999

Claims 1 through 5, 7, 8, 11 through 14, 16, 17, 19, 21 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dickhoff.

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Claims 6, 15 through 18 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dickhoff in view of Kovac.

Rather than attempt to reiterate the examiner's commentary with respect to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (Paper No. 15, mailed December 15, 2003) for the reasoning in support thereof, and to appellants' brief (Paper No. 14, filed November 10, 2003) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that neither of the examiner's rejections noted above will be sustained. Our reasons follow.

Turning first to the examiner's rejection under 35 U.S.C. § 102(b) based on Dickhoff, we note that the examiner's position, insofar as it addresses claim 1 on appeal, is that Dickhoff discloses a folder unit (Fig. 1) comprising side walls (16, 17) and a plurality of rollers (10, 11), wherein the side walls "have recesses 19a and 19b for receiving framework 19 including delivery rollers 7" (answer, page 3). On page 5 of the answer, the examiner further urges that the side walls (16, 17) of Dickhoff have front sides pointing downstream and asserts that the "recesses/openings 19a and 19b are considered to 'point downstream'."

Our first problem with the examiner's position is that elements (19a) and (19b) of Dickhoff's folder unit, identified by the examiner as being recesses or openings, are actually described in the Dickhoff patent (col. 4, lines 10-18) and shown in drawing Figures 1 and 2 as being, respectively, "bearings 19a" on both side panels (16, 17) associated with the pivot arms (19, 20) of the pressure roller unit (4), and the "lower end 19b" of pivot arms (19, 20). However, assuming that the examiner is

instead referring to the apertures in side walls (16, 17) shown generally in Figure 1 and apparently associated with the bearings (19a) of Dickhoff's pivot arms (19, 20), we note that such apertures are clearly not located "at said front side" of the side walls of the folder unit as required and defined in claim 1 on appeal, and clearly do not form an opening "pointing downstream with respect to the product travel direction," as recited in appellants' claim 1, which travel direction is from left to right as seen in Figure 1 of Dickhoff (note, for example, col. 4, lines 4-9, Fig. 3 and Fig. 8). Apertures associated with the bearings (19a) in Dickhoff's folder unit are instead located adjacent the upstream side of walls panels (16, 17) and define openings that clearly are arranged to point in a direction that is essentially perpendicular to the product travel direction.

Since Dickhoff does not disclose or teach, either expressly or inherently, each and every limitation of appellants' claim 1, or claims 2 through 5, 7, 8, 11 through 14, 16, 17, 19, 21 and 22

on appeal, it follows that the examiner's rejection of those claims under 35 U.S.C. § 102(b) will not be sustained.¹

Regarding the examiner's rejection of claims 6, 15 through 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Dickhoff in view of Kovac, we have reviewed the patent to Kovac, but find nothing therein which overcomes or provides for the deficiencies we have identified above with regard to the folder unit of Dickhoff. Accordingly, the examiner's rejection of dependent claims 6, 15 through 18 and 20 under 35 U.S.C. § 103(a) will likewise not be sustained.

In summary, we note that the examiner's rejection of claims 1 through 5, 7, 8, 11 through 14, 16, 17, 19, 21 and 22 under 35 U.S.C. § 102(b) as being anticipated by Dickhoff, and that of claims 6, 15 through 18 and 20 under 35 U.S.C. § 103(a)

¹ We note in passing that claims 16, 17 and 19 subject to the examiner's rejection under 35 U.S.C. § 102(b) based on Dickhoff alone depend, either directly or indirectly, from claim 15, which the examiner rejects under 35 U.S.C. § 103(a) based on Dickhoff modified in view of Kovac. Thus, it would appear that dependent claims 16, 17 and 19 should more properly have been rejected under 35 U.S.C. § 103(a) based on Dickhoff and Kovac.

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as being unpatentable over Dickhoff in view of Kovac have not
been sustained. Thus, the decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
)	
CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	
)	INTERFERENCES
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)	
JOHN P. MCQUADE)	
Administrative Patent Judge)	

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